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ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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May 5, 2004

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RUD ALBRIGHT, STAFF DIRECTOR

The Honorable Karen Tandy
Administrator
Drug Enforcement Administration
2401 Jefferson Davis Highway
Alexandria, Virginia 22301

Dear Administrator Tandy:

I am writing to you because of the failure of the Drug Enforcement Administration (DEA) to address adequately the continuing and increasing problem posed by the thousands of illegal controlled substances now entering the United States each day through the consignment carriers and the many international mail branch facilities. Both the scale and the diversity of controlled substances now entering the U.S. through various mail systems have grown exponentially over the last five years.

The issue of controlled substances entering the U.S. via the consignment carriers and international mail facilities has been a concern of mine for years. Moreover, it has also been the subject of numerous hearings held before the Committee on Energy and Commerce (at which DEA, Customs, and FDA have all provided testimony). To this latter point, I am attaching a copy of the relevant pages of a hearing held July 30, 1999, before the Subcommittee on Oversight and Investigations of this Committee. These passages are important because they represent the testimony of FDA and the Department of Justice regarding their plan to address this problem almost five years ago.

The central themes of this previous plan, however, appear largely identical to the proposals now being discussed by your agency, as evident in a recent briefing given to Committee staff by senior DEA and Department of Justice officials. The individuals at that briefing told staff of a "strategic plan" to have a functioning "webcrawler" and the formation of a new interagency "task force" to coordinate how to best approach this issue. Yet this "new" task force (made up of the very agencies that have been involved in previous task forces on this matter -- namely FDA, Customs, and DEA) appears strikingly similar to the task force of the late 1990s.

Moreover, according to your senior staff, this new task force is to develop strategies for the use of information gleaned from the new webcrawler to then shut down foreign rogue sites and offending shippers. But the formation of a special webcrawler was the centerpiece of the strategic plan of 1999, and that earlier task force and the earlier webcrawler failed to make a dent in this problem. And DEA officials at this latest briefing were not even aware that an earlier webcrawler had been developed and deployed by FDA.

DEA lawyers and operational managers at the briefing offered the same tactics and procedures that have so far proved completely ineffective in dealing with this matter. Those tactics are based largely on the traditional narcotics enforcement model which, unfortunately, appears to have little realistic application to the problem of individual imports of schedules II-V drugs ordered over the Internet, which are often comprised of relatively small shipments going to individuals. DEA officials informed staff that upon the identification of these foreign traffickers, DEA field offices (in the counties from where drugs were sent) would be supplied this information and then asked to procure the assistance of foreign governments to halt such shipments (and then presumably apply whatever criminal sanctions were available under the foreign law). When asked how often this model has, over the past five years, resulted in shutting down illegal websites and shippers sending drugs to the U.S., no estimates could be obtained from DEA. To my recollection, in the past five years, this approach has only resulted in shutting down a single website (after substantial work with the government of Thailand). Of course, hundreds of websites are currently offering dangerous drugs for sale to U.S. residents. Given the time involved in shutting down this single site, it is unrealistic to expect this model to have any measurable impact on the broader problem.

Some apparently believe this ineffectual model must be followed in order to avoid contaminating potential criminal prosecutions or compromising the rights of the traffickers. There might be some justification for this position regarding domestic internet sites operated by U.S. citizens. It is clear, however, that regardless of the effectiveness of the new webcrawler, this model will result in few (if any) criminal prosecutions of foreigners involved in foreign websites. Nonetheless, the DEA apparently refuses to consider alternative means of stopping these shipments.

On February 24, 2004, I sent you a letter which described a potential solution to this burgeoning problem. DEA was informed that at least one, and probably all, major credit card companies and at least one, and probably all, major consignment carriers were prepared to work with the DEA to cut off the credit and the shipping rights of anyone using their cards or shipping services to traffic controlled substances into the United States. Because such imports are illegal, several of these firms were told by your agency that they were not permitted to make the "buys" necessary to identify which of their customers are violating U.S. law. Our discussions, however, have produced assurances that these private sector firms would act unilaterally and quickly deny the banking services necessary to facilitate these shipments. This would require that DEA conduct the necessary foreign "buys" so that the scofflaw sites could be identified, something I see no evidence DEA is doing.

Because these offers of private sector assistance were made to Congressional staff, it would appear that DEA would have little trouble working out an acceptable program that would at least assure a substantial dent in this form of drug dealing. Not only could some Internet sites be shut down quickly, but the increase in uncertainty of receiving the ordered contraband from any Internet site would presumably deter adolescents and other U.S. customers of these drugs from placing orders at all. While your agency provided some vague concerns about various court rulings on this matter, neither DEA nor the DOJ staff provided any formal analysis or opinion as to whether this was feasible.

DEA, of course, is only part of the problem. Customs has failed to modernize its regulations dealing with an important administrative roadblock caused by the sheer volume of these illegal imports. Specifically, Customs requires a strict accounting of the receipt and disposition of all imports that violate the Controlled Substances Act. This would appear appropriate as a means of assuring that these dangerous but valuable street drugs do not get lost or stolen in the interdiction and destruction process. This is arguably necessary when dealing with tons of marijuana, and kilos of cocaine, but dangerously inefficient in the processing of thousands of relatively smaller shipments of schedules II-V substances. For example, Customs field officials have repeatedly told staff that they spend between 30 minutes to more than an hour to seize (e.g., process paperwork) a single shipment of a controlled substance that arrives in a mail facility. When hundreds if not thousands of shipments may arrive weekly, this is clearly untenable. Customs has undoubtedly been informed of these inefficiencies from its inspectors at the international mail facilities. Additionally, Customs officials have been informed in private briefings, and public hearings, of our concerns for at least the past four years. Clearly, some provision must be made to deal with bulk-drug custody (and accounting) and subsequent destruction. But, to my knowledge, this critical bottleneck has not been alleviated, nor has DEA exerted any leadership or initiative to rectify this failure.

In conclusion, I remain highly skeptical that a new webcrawler, a new task force, working closely with foreign countries to seek criminal prosecutions of offending shippers, and sending cease and desist letters -- tactics which have all been tried in the past -- will help significantly. New approaches are clearly needed. Moreover, until FDA deploys more inspectors at the mail facilities (which it has not asked for) and DEA, Customs, and FDA obtain the tools they need to rapidly seize and destroy the illegal and dangerous substances entering these facilities (which will require new legislation, yet to be proposed), the flood of illegal controlled substances will only worsen.


Please reexamine the adequacy and effectiveness of your agency's policies and procedures. As part of that review, please respond to the following questions:

1. Does DEA have a coordinated comprehensive written plan to address what is clearly a growing threat to the public health? If so, please provide that plan. If not, please explain why no such plan exists and/or whether such a plan is being prepared.

2. Has DEA determined whether Customs has the ability to change its internal "processing" procedures with respect to personal (or small) shipments of controlled substances (Schedules II-V) entering the U.S. via the U.S. mail, and the major consignment carriers? Is it planning to do so? Also, please describe (1) the approximate number of man-hours expended each year at each of the 13 mail facilities to process controlled substances; and (2) the average time it takes a Customs inspector to process a single package containing a controlled substance.
3. How rapidly is the quantity of unregulated dangerous drugs entering the U.S. via mail, and mail-related channels, growing? Does DEA have estimates of the quantity of prescription drugs that are now entering the U.S. each month via (1) the U.S. mail facilities and (2) the major consignment carriers? Are they collecting meaningful data on this problem, and if so, in what form? If not, why are such statistics not gathered?
4. Does DEA have a plan to address the problem of the many Internet sites that purportedly appear to be both advertising and shipping illegal controlled substances into the U.S. via Federal Express, United Parcel Service, and all other relevant consignment carriers? If so, please describe that plan in detail and how it has changed since the late 1990s. Does DEA believe that the consignment companies are adequately policing the activities of the vendors using their services? Does DEA have any estimates on the amount of money that consignment carriers are making as a result of these illegal drug transactions?
5. What role does DEA believe that the major credit card companies (such as Visa and Master Charge) and underwriting banks are playing in selling controlled substances via the Internet? Does DEA believe that these credit card companies are adequately policing the activities of the vendors using their services? Does DEA have any estimates on the amount of money that credit card companies are making as a result of these illegal sales?
6. What additional legal authority is needed? I note that informal requests from Congressional staff for comments on draft language have gone unanswered. Have you considered whether new laws are needed? What was your conclusion, and why?

Thank you for your assistance in addressing this extremely important public health matter. If you have any questions about this request, please contact me or have your staff contact Christopher Knauer or David Nelson of the Committee on Energy and Commerce Democratic staff at (202) 226-3400.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER

The Honorable Karen Tandy
Page 5

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable James C. Greenwood, Chairman
Subcommittee on Oversight and Investigations

The Honorable Peter Deutsch, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Tommy G. Thompson, Secretary
Department of Health and Human Services

The Honorable Robert C. Bonner, Commissioner
United States Customs Service

Lester M. Crawford, D.V.M., Ph.D, Acting Commissioner
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Nora D. Volkow, M.D., Director
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